CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 58

W. CLAY RODGERS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 28, 1947.

CERTIORARI GRANTED MAY 5, 1947.

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IN THE

DISTRICT COURT of the UNITED STATES

WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

Vs. No. 899 Civil

W. CLAY RODGERS,

Defendant.

APPEARANCES

For the United States, Mr. William McClanahan,
United States Attorney.
Memphis, Tennessee.

For the Defendant, Mr. W. C. Rodgers, Atty.
Exchange Building,
Memphis, Tennessee.

COMPLAINT.

Filed August 10 1945.

Plaintiff, by William McClanahan, United States Attorney for the Western District of Tennessee, acting under the direction of the Attorney General, upon request of the Secretary of Agriculture (hereinafter referred to as the "Secretary"), and the War Food Administrator, brings this complaint, and avers:

I

The defendant is a citizen of the State of Tennessee, and resides at Memphis, in the County of Shelby, in said State.

II

This action is brought under the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.), (hereinafter referred to as the "Act"), section 376 (7 U.S.C. 1376), of which vests the several Districts Courts with jurisdiction specifically to enforce the provisions of Title III thereof.

III

The purpose of this action is to enforce against the defendant the cotton marketing quota provisions of the Act (7 U.S.C. 1341-1350, 1361-1376) as amended by Public No. 74, 77th Congress, approved May 26, 1941 (7 U.S.C. Supp. III, 1340), and the provisions of the cotton marketing quota regulations for the 1940-1941, 1941-1942 and

1942-1943 marketing years (hereinafter referred to as the "Regulations"), and to collect from the defendant the penalties incurred and payable by him thereunder. The 1940-1941 regulations (Cotton 407) were issued December 9, 1939 (4 F.R. 4817-4821), and supplemented May 23, 1940 (5 F.R. 1887-1901), and June 4, 1940 (5 F.R. 2132). The 1941-1942 regulations (Cotton 507) were issued February 14, 1941 (6 F.R. 962-980), and supplemented April 16, 1941 (6 F.R. 1997-1999), and August 5, 1941 (6 F.R. 3935-3936). The 1942-1943 regulations (MQ 603 Cotton) were issued June 8, 1942 (7 F.R. 4363-4376), and supplemented June 24, 1942 (7 F.R. 4753). True and correct copies of said regulations and supplements, marked respectively as "Plaintiff's Exhibits "A", "B", and "C", are attached to the original of this complaint, but are not made a part thereof.

IV

The defendant was engaged in the production of cotton within the meaning of the Act and Regulations in 1940 on a farm operated by him in Chicot County, Arkansas, designated under the regulations by serial number 1358, and in 1941 and 1942 on farms operated by him in Tunica County, Mississippi, designated by serial number 684 and 635, respectively.

V

After the occurrence and performance of all conditions precedent, the Secretary, acting through the local county agricultural conservation committees (7 U.S.C. 1388a), established a marketing quota for each of the

farms operated by the defendant during the 1940, 1941 and 1942 crop years.

For farm serial number 1358 (1940), there were established a cotton acreage allotment of 119.5 acres, a normal yield of 290 pounds per acre, and a marketing quota of 34,655 pounds of lint cotton. For farm serial number 684 (1941), there were established a cotton acreage allotment of 168.7 acres, a normal yield of 341 pounds per acre, and an initial marketing quota of 57,527 pounds of lint cotton. For farm serial number 635 (1942), there were established a cotton acreage allotment of 174.5 acres, a normal yield of 841 pounds per acre, and an initial marketing quota of 59,504 pounds of lint cotton. Notice was duly given defendant of the acreage allotment, normal yield, and marketing quota established for each of the farms aforesaid.

VI

During the 1940-1941 marketing year, 231.8 acres were planted to cotton on farm serial number 1358, which was 112.3 acres in excess of the acreage allotment established for the farm. The defendant, as operator of the farm, filed with the County Agricultural Conservation Committe for Chicot County, Arkansas, a partially executed farm operator's report showing the production on and marketing from said farm of 54,674 pounds of lint cotton, which was 20,019 pounds in excess of the marketing quota established for the farm. The penalty incurred by defendant by reason of the marketing of such excess cotton is $600.57 (Adm. Reg. (Cotton 407) Sec. 701).

The defendant, although requested to do so, has failed and refused to furnish as part of said farm operator's report, the name and address of each buyer to whom the defendant sold such cotton.

During the 1941-1942 marketing year, 348.7 acres were planted to cotton on farm serial number 684, which was 180 acres in excess of the acreage allotment established for the farm. Defendant, as operator of the farm, filed with the County Agricultural Conservation Committee for Tunica County, Mississippi, a partially executed farm operator's report showing the production on and marketing from said farm of 160,298 pounds of lint cotton, which was 82,595 pounds in excess of the marketing quota for the farm as adjusted for actual production. The penalty incurred by defendant by reason of the marketing of such excess cotton is $5,781.65 (Adm. Reg. (Cotton 507) Sec. 701 as amended by Supp. 2). The defendant, however, failed and refused to furnish as part of said farm operator's report, the name and address of each buyer to whom the defendant sold such cotton.

There were planted 387.9 acres to cotton on farm serial number 635, during the 1942-1943 marketing year, which was 213.4 acres in excess of the acreage allotment established for the farm. Reports and information from other sources submitted to the plaintiff indicate that there was produced on and ginned from said farm at least 149,147 pounds of lint cotton, which amount is in excess of the marketing quota established for the farm. The County Agricultural Conservation Committee for Tunica County, Mississippi, acting pursuant to the regula-

mittee for Chicot County, Arkansas, with respect to farm serial number 1358, and to the County Agricultural Conservation Committee for Tunica County, Mississippi, for farm serial number 684, and to file with the County Agricultural Conservation Committee for Tunica County, Mississippi, a farm operator's report on form Cotton 417, a copy of which is attached hereto and marked "Plaintiff's Exhibit D", for farm serial number 635, containing all the information prescribed by the administrative regulations.

(2) That judgment against the defendant in favor of the plaintiff be rendered for the sum of $6,301.28, and for such further amount of money as shall be determined, upon and after the filing of the report for farm serial number 635, or otherwise, to be due and payable by the defendant to the plaintiff for and on account of cotton marketing penalties incurred by the defendant under the Act, plus interest from the time such penalties became due and payable.

(3) That plaintiff be given such other, further and different relief as this Court may deem just and proper.

UNITED STATES OF AMERICA,
By William McClanahan,
United States Attorney.
Memphis, Tennessee.

Joseph B. Zimowski,
Senior Attorney,
Office of the Solicitor,
U.S. Department of Agriculture,
Washington, 25, D. C.

MOTION TO DISMISS.

Filed September 12, 1945.

Comes Defendant and moves the Court to dismiss the complaint filed against him in the above styled cause on the ground that it states no cause of action against him, and particularly, in that:

I

The marketing quota penalties sued for in said action have been suspended, repealed, dispensed with and abrogated, and are no longer enforcible, by orders of Marvin Jones, War Food Administrator, dated July 1, 1943 and September 21, 1943, prior to the institution of this suit.

II

All actions or rights of actions claimed or alleged therein are barred by the Statute of Limitations, both Federal and State.

Wherefore, Defendant moves the dismissal of said cause of action.

W. Clay Rodgers,

Defendant.

MOTION FOR LEAVE TO AMEND COMPLAINT

Filed November 9, 1945.

Comes the plaintiff, United States of America, and moves the Court that the plaintiff, United States of America, be allowed to amend the original complaint filed in this cause by plaintiff on September 12, 1945, as follows:

First: By inserting on page 3, after the second sentence in the first paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Second: Inserting at page 4, after the second sentence in the second paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Third: Striking the remainder of the sentence on page 6, paragraph 1, line 6, after the words "farm serial number 684", and substituting therefor the following:

> "and to file with the County Ariculttral Conservation Committee for Tunica County, Mississippi, farm operator's reports on forms Cotton 417, a copy of which is attached hereto and marked 'Plaintiff's Exhibit D' for farm serial number 635, for the periods designated by the regulations, and containing all of the information prescribed therein."

Motion for leave to amend complaint.

Fourth: Inserting at page 7, paragraph 2, line 2, after the words "for the sum of $6,301.28 and", the following:

"that the Court retain jurisdiction of this cause and enter a judgmgent in favor of plaintiff."

Fifth: At page 7, paragraph 2, line 4, making the word "report"' plural.

WILLIAM McCLANAHAN,
United States Attorney,

By Robt. G. Jeter,
Assistant United States Atty.
Attorney for Rlaintiff.

This will acknowledge receipt of a copy of the Motion for Leave to Amend the Complaint.

ORDER GRANTING LEAVE TO AMEND COMPLAINT

Entered November 9, 1945. Marion S. Boyd, Judge.

This cause came on to be heard on plaintiff's written motion for leave to amend the complaint herein, and it appearing to the Court that such an amended complaint would clarify the issues herein, and should be allowed,

It is ORDERED that the motion for leave to amend be, and the same is hereby, granted.

This 9 day of, November, 1945.

APPROVED:

Robt. G. Jeter,

Assistant United States Attorney.

AMENDMENTS TO ORIGINAL COMPLAINT

Filed November 9, 1945.

Amendments to the complaint in this cause made pursuant to an order of the Court on the 9th day of November, 1945.

First: By inserting on page 3, after the second sentence in the first paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Second: Inserting at page 4, after the second sentence in the second paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Third: Striking the remainder of the sentence on page 6, paragraph 1, line 6, after the words "farm serial number 684", and substituting therefor the following:

> "and to file with the County Aricultural Conservation Committee for Tunica County, Mississippi, farm operator's reports on forms Cotton 417, a copy of which is attached hereto and marked 'Plaintiff's Exhibit D' for farm serial number 635, for the periods designated by the regulations, and containing all of the information prescribed therein."

Amendments to original complaint.

Fourth: Inserting at page 7, paragraph 2, line 2, after the words "for the sum of $6,301.28 and", the following:

> "that the Court retain jurisdiction of this cause and enter a judgmgent in favor of plaintiff."

Fifth: At page 7, paragraph 2, line 4, making the word "report'" plural.

WILLIAM McCLANAHAN,

United States Attorney,

By Robt. G. Jeter,

Assistant United States Atty.

Attorney for Plaintiff.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS.

Entered November 27, 1945. Marion S. Boyd, Judge.

This cause came on to be heard on the 19th day of November, 1945, on defendant's motion to dismiss the complaint herein, on the ground that the cotton marketing quota penalties sued on under the Agricultural Adjustment Act of 1938 have been terminated by orders of the War Food Administrator, and are, therefore, not enforcible for the crop years in question; and

The Court, after consideration of the pleadings, briefs and argument of counsel, and on authority of the following cases, to-wit:

United States v. Hark, et al, 320 U.S., 531,

United States v. Curtiss-Wright Export Corp., 299 U.S., 304,

Bowles, Admr., O.P.A. v. May Hardwood Co., et al, (C.C.A. 6th), 140 Fed. (2nd), 914,

is of the opinion defendant's motion is without merit, and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that defendant's motion to dismiss the complaint herein be, and the same is hereby, denied, to which action of the Court the defendant duly excepts.

ANSWER OF DEFENDANT.

Filed February 4, 1946.

Comes defendant, Wm. Clay Rodgers, and for answer to the Complaint heretofore filed against him in this cause, says:

Defendant admits paragraphs I, II, III, IV and VII, but denies paragraphs V, VI and VIII, and further states the facts to be that he did make reports as demanded by the County Agricultural Agents or Committee, but admits that he did not report the purchasers of his cotton, this not being required, as he construes the Act and Regulations. His reason for this being all the cotton sold by the defendant not covered by red cards, so called, was 1-1/2 in staple length, or better, and not subject to the Act or Regulations; that so far as the 1942 crop was concerned, all the cotton sold in excess of the allotments was either 1.1/2 inches, or better, in staple, or was sold in July 1944, long after the suspension and termination of all penalties and regulations.

Further, defendant would show to the Court that said Act, and all rules and regulations promulgated thereunder, were suspended or terminated on or about July 10th, 1943, by proper order and proclamation of the National War Food Administrator, who was then vested with this power and authority, and such suspension and termination has been continued in full force and effect to date, either by the Food Administrator or the United States Secretary of Agriculture, who is likewise vested

with such power and authority by the Act and Regulations.

Wherefore, the defendant says he does not owe the amounts claimed and sued for, in the first place, and, in the second place, that these suspensions and terminations of said Agrgicultural Adjustment Act of 1938, and the regulations promulgated pursuant thereto, suspended and terminated all right to demand or recover all penalties theretofore incurred, and defendant is no longer liable for penalties arising thereunder, and the same are not now enforcible by this suit, or otherwise.

Therefore, having fully answered, the defendant prays to be dismissed with his reasonable costs.

W. C. Rodgers,
Defendant
1001-2 Exchange Bldg.,
Memphis, Tennessee.

STIPULATION.

Filed February 21, 1946.

In this cause, it is stipulated and agreed by and between the Attorney for the Government and the defendant, W. Clay Rodgers, that in lieu of introducing any proof, and to save expenses, this case can be tried upon this stipulation, together with the Exhibits heretofore filed with the Clerk by the plaintiff, and the entire record on file.

The parties stipulate and agree as follows:

I

It is agreed that this action is brought under the Agricultural Adjustment Act of 1938, as amended, and the Regulations issued thereunder, and as set out in the complaint filed in this cause.

II

It is further stipulated and agreed that the defendant was engaged in the production of cotton as set out in the petition, and within the meaning of the Agricultural Adjustment Act and Regulations in 1940 on a farm owned and operated by defendant in Chicot County, Arkansas, designated under the Regulations by Serial No. 1358, and in 1941 and 1942, on farms owned and operated by defendant in Tunica County, Mississippi, designated by Serial Nos. 684 and 635, respectively.

III

It is further stipulated by the parties that for the year 1940, the defendant was allotted 119.5 acres of cotton on his farm Serial No. 1358, owned and operated by defendant in Chicot County, Arkansas, and that the defendant planted 231.8 acres of cotton in 1940, or an excess acreage of cotton for 1940 in the amount of 112.3 acres. That in 1940, the defendant was allotted under the Act a quota of 34,655 pounds of cotton, and that the defendant raised and marketed during the 1940-1941 marketing year 54,674 pounds of cotton, or excess cotton in the amount of 20,019 pounds, and that this excess cotton was marketed by the defendant while farm marketing quotas were in effect, and that the penalty for the cotton marketed in 1940 amounts to 3 cents per pound, and that the amount of the penalty due on the 1940 cotton that was raised and marketed by defendant amounts to the sum of $600.57.

IV

It is further stipulated and agreed by the parties that for the year 1941, the defendant was allotted 168.7 acres of cotton on his farm Serial No. 684, owned and operated by defendant in Tunica County, Mississippi, and that defendant planted in 1941 348.7 acres of cotton, or an excess acreage of cotton in the amount of 180 acres. That in 1941, the defendant, under the Agricultural Adjustment Act, was allotted a quota of 77,703 pounds of cotton, and that the defendant raised and marketed during the 1941-1942 marketing year, while cotton farm mark-

eting quotas were in effect, 160,298 pounds of cotton, or excess cotton in the amount of 82,595 pounds. And it is agreed by the parties that the penalty for 1941 was 7 cents per pound, and that the amount of the penalty due on the 1941 cotton that was raised and marketed by defendant while farm marketing quotas were in effect, amounts to the sum of $5,781.65.

V

It is further stipulated and agreed that for the year 1942, the defendant was allotted under the Act 174.5 acres of cotton on his farm Serial No. 635, owned and operated by defendant in Tunica County, Mississippi, and that defendant planted 387.9 acres of cotton, or an excess acreage of cotton in the amount of 213.4 acres. That for the year 1942, the defendant was allotted a quota of 67,095 pounds of cotton, and that the defendant raised and marketed during the 1942-1943 marketing year 149,147 pounds of cotton, or excess cotton in the amount of 82,052 pounds, which excess cotton was marketed by defendant while farm marketing quotas were in effect.

It is agreed by the parties that 19,436 pounds of this cotton was over 1-1c2 inch, and that 52,968 pounds of this cotton was sold after August 1, 1943, and that one bale, weighing 420 pounds, was destroyed by fire, making a total of 72,824 pounds upon which no penalty attached.

It is agreed that the defendant raised and marketed in 1942, while farm marketing quotas were in effect,

9,228 pounds of excess cotton, and that the penalty for 1942 was 8 cents per pound, and that the penalty amounts to the sum of $738.24. However, it is further agreed that the defendant is entitled to a benefit payment setoff in the amount of $80.94, and that the penalty, after allowing for the setoff, amounts to the sum of $657.30.

VI

"It is further stipulated that the total amount of the cotton marketing penalties for the years 1940, 1941 and 1942 amount to the sum of $7,039.52, and same are unpaid. And the defendant stipulates and agrees that the only questions involved are legal questions as to whether or not the farm marketing quota penalties for the marketing years of 1940-1941, 1941-1942 and 1942-1943 have been suspended by orders of the War Food Administrator issued in July and September, 1943, 8FR 12, 922-12, 923, and (the Secretary of Agriculture) November 1944 and 1945 F.R. 44-17515 and 45-20837, and the question of law as to whether or not interest should be allowed on the penalties." R. p. 21. (Parenthesis supplied).

It is further stipulated that true and correct copies of said Regulations and Supplements of the Agricultural Adjustment Act, marked respectively as plaintiff's Exhibits "A", "B", "C" and "D", have been filed with the Clerk of the Court, and may be used as evidence.

VIII

It is further stipulated that the defendant has failed to file Farm Operaor's Reports, as alleged in the com-

plaint, and it is agreed that this stipulation may be filed and read as evidence in this cause.

This the 21st day of February, 1946.

Robt. G. Jeter,

Attorney for Plaintiff.

W. C. Rodgers,

Attorney for Defendant.

FINAL JUDGMENT.

Entered March 4, 1946. Marion S. Boyd, Judge.

This cause came on to be heard the 28th day of February, 1946, on the written sttipulation of facts entered into between the United States of America, plaintiff, and W. Clay Rodgers, defendant, and on the pleadings, briefs and argument of counsel; and

Said written sttipulation being hereby adopted as the Court's Findings of Fact; and

It appearing that the only questions involved are whether or not the Farm Marketing Quota Penalties for the marketing years 1940-1941, 1941-1942 and 1942-1943 have been suspended by orders of the War Food Administrator, issued in July and September, 1943, and whether or not interest should be allowed on said penalties; and

The Court, upon said Stipulation and Findings of Fact, and for the reasons, and upon the authorities set out in the order heretofore entered, overruling defendant's motion to dismiss the complaint, is of the opinion that the marketing penalties for the marketing years 1940-1941, 1941-1942 and 1942-1943 were not suspended by said orders of the War Food Administrator, and that defendant's contention in this respect is without merit, and that defendant has violated the Agricultural Adjustment Act of 1938, the amendments and regulations pursuant thereto, and is subject to the penalties imposed thereunder; and, further, that for reasons of equity and fairness, interest at the rate of six per centum (6o/o) per annum should be allowed as of the effective date of said penalties;

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiff have and recover judgment of the defendant as follows:

Penalty in the amount of $600.57, with interest thereon at the rate of six per centum (6o/o) per annum from March 1, 1941, to and including February 28, 1946, making a total amount of $780.42 as penalty and interest for

tthe marketing year 1940-1941; penalty in the amount of $5,781.65, with interest at the rate of six per centum (6o/o) per annum from March 1, 1942, to and including February 28, 1946, making a total amount of $7,166.32 as penalty and interest for the marketing year 1941-1942; and penalty in the amount of $657.30, with interest at the rate of six per centum (6o/o) per annum from March 1, 1943, to and including February 28, 1946, making a total amount of $775.24, as penalty and interest for the marketing year 1942-1943; the total amount of the judgment herein being the sum of $8,721.98, covering penalties and interest due thereon for cotton raised in excess of quotas under the Agricultural Adjustment Act of 1938, amendments and regulations pursuant thereto.

It further appearing to the Court that the defendant herein has failed or refused to file Farm Operator's Report for the marketing year 1942-1943, as required by the Act;

IT IS FURTHER ORDERED AND ADJUDGED that the defendant, W. Clay Rodgers, shall forthwith complete and file said report.

IT IS FUURTHER ORDERED AND ADJUDGED that the defendant will pay all costts of this action, for which execution may issue.

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS.

Filed March 8, 1946.

Notice is hereby given that W. Clay Rodgers, the defendant, appeals to the Circuit Court of Appeals for the Sixth Circuit from the Final Judgment (decree) entered in this cause on March 4, 1946, in favor of the plaintiff, and against the defendant, for the total sum of $8,721.98, and the costs of the cause.

This March 7, 1946.

W. C. Rodgers,

Defendant.

SUPERSEDEAS BOND.

Filed April 3, 1946.

KNOW ALL MEN BY THESE PRESENTS, that we, W. C. Rodgers, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound

unto the above named plaintiff, United States of America, in the full and just sum of Nine Thousand and No/100 Dollars ($9,000.00), to be paid to the said Plaintiff, or its assigns, to which payment the said defendant, his heirs, executors, administrators, successors or assigns, jointly and severally by these presents.

Executed this 3rd day of April, 1946.

The Condition of this obligation is such that:

Whereas, on the 4th day of March, 1946, in the above entitled action between the above named Plaintiff, United States of America, and the above named Defendant, W. Clay Rodgers, a judgment in the amount of $8,721.98 was rendered against the said Defendant, and the said Defendant has appealed to the United States Circuit Court of Appeals for the Sixth Circuit.

Now, therefore, if the said W. Clay Rodgers shall satisfy the aforesaid judgment in full, together with costs, interest and damages for delay, or for any reason the appeal is dismissed, or if the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interests and damages as the Appellate Court may adjudge and award, then this obligation to be void; otherwise in full force and effect.

W. Clay Rodgers,

W. C. Rodgers,

Principal.

Bond

THE AETNA CASUALTY & SURETY CO.

By J. J. Morrison,

Resident Vice President.

ATTEST: J. W. Wendel,

Resident Asst. Secretary.

(SEAL)

APPROVED:

Marion S. Boyd,

Judge.

4-3-46.

ORDER EXTENDING TIME TO COMPLETE RECORD ON APPEAL AND FILING SAME IN THE U. S. CIRCUIT COURT OF APPEALS.

Entered April 11th, 1946. Marion S. Boyd, Judge.

It appearing to the Court that additional time is necessary for preparing the record in this cause and filing same in the United States Circuit Court of Appeals;

The Court hereby orders that the time be, and is hereby, extended fifty days from this date for preparing said record on appeal and filing same in the United States Circuit Court of Appeals.

ORDER: DIRECTING ORIGINAL EXHIBITS BE SENT TO U. S. CIRCUIT COURT OF APPEALS.

Entered April 11th, 1946. Marion S. Boyd, Judge.

Upon application of defendant, IT IS ORDERED that the Clerk of this Court is authorized and directed to send to the Circuit Court of Appeals all original exhibits in the above styled case, and that same need not be printed as part of the record on appeal.

O.K. Robt. G. Jeter,

Attorney for Plaintiff.

O.K. W. C. Rodgers,

Attorney for Defendant.

APPELLANT'S DESIGNATION OF POINTS RELIED UPON ON APPEAL.

Filed April 17 ,1946.

I

The 1938 Agricultural Adjustment Act, as amended, is suspended, and the penalties provided therein cannot be enforced during the suspension, there being no saving clause.

II

Interest is not recoverable on penalties.

III

This is a suit in equity for penalties, which is not favored, and interest should not be allowed under either State or Federal laws.

W. C. Rodgers,

Defendant.

PRAECIPE.

Filed April 17, 1946.

Comes Defendant and designates the following items as constituting the Record on Appeal:

1 The origingal complaint.

2 Defendant's Motion to Dismiss.

3 Motion for Leave to Amend Complaint.

4 Order Granting Leave to Amend Complaint.

5 Amendments to Original Complaint.

6 Order Denying Defendant's Motion to Dismiss.

7 Answer of Defendant.

8 Stipulation.

9 Final Judgment.

10 Notice of Appeal to Circuit Court of Appeals.

11 Supersedeas Bond.

12 Appellant's Designation of Points Relied Upon on Appeal.

W. C. Rodgers,

Defendant.

CLERK'S CERTIFICATE

DISTRICT COURT OF THE UNITED STATES
SIXTH JUDICIAL CIRCUIT
WESTERN DISTRICT OF TENNESSEE

I, W. LLOYD JOHNSON, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the papers hereto attached are full, true, perfect, and correct copies of the original record and proceedings as called for by praecipe of Appellant in said Court as the same now appears of record and upon the files in my office, in the following cause, to-wit:

W. CLAY RODGERS,

Appellant.

Vs. **No. 899 Civil**

UNITED STATES OF AMERICA.

Appellee.

IN TESTIMONY WHEREOF, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Memphis, Tennessee, this 19th day of April, A. D. 1946, and of the Independence of the United States the 170th year.

(SEAL) (Signed) W. LLOYD JOHNSON.

Clerk.

AUTHENTICATION

I, MARION S. BOYD, a Judge of said Court, do hereby certify that W. Lloyd Johnson, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

(Signed) Marion S. Boyd,

Judge of the District Court of the United States for the District aforesaid.

CLERK'S CERTIFICATE OF PRINTED RECORD

UNITED STATES OF AMERICA,

ss:

WESTERN DISTRICT OF TENNESSEE

I, W. LLOYD JOHNSON, Clerk of the District Court in and for the Western District of Tennessee, do hereby certify that the annexed and foregoing is a true and complete copy of the printed record in the case of:

W. CLAY RODGERS,

Defendant-Appellant,

Vs. **No. 899 Civil**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Memphis, Tennessee, this the ..... day of .....: A.D., 1946.

.....

Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 7, 1946—Before: HICKS, SIMONS and MARTIN, JJ.)

This cause is argued by W. C. Rodgers for Appellant and by James A. Doyle for Appellee and is submitted to the Court.

JUDGMENT

(Filed and Entered January 13, 1947)

Appeal from the District Court of the United States for the Western District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Tennessee, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed January 13, 1947)

Before HICKS, SIMONS and MARTIN, Circuit Judges.

SIMONS, Circuit Judge. The judgment challenged in the present appeal is for so-called penalties pursuant to the Agricultural Adjustment Act as amended (7 U. S. C. A. 1281 et seq.), imposed upon the appellant for marketing excess quota cotton in the years 1940, 1941 and 1942. Subordinate questions involve interest upon the judgment and interest from the time the penalties should have been remitted to the Secretary of Agriculture, such interest having been included and provided for in the judgment.

The Act (7 U. S. C. A. 1341 et seq.) provides that not later than November 15 of each year the Secretary of Agriculture shall find and proclaim the total supply, the normal supply and the carry-over of cotton as of August 1 of each year, the principal domestic consumption during the marketing year commencing August 1, the principal exports of cotton during such year and the estimated carry-over of cotton as of August 1 next succeeding. If the Secretary finds that the total supply of cotton for the marketing year exceeds by more than 7% the normal supply for such year, he is required to proclaim such fact and marketing quotas shall be in effect during the next succeeding marketing year unless more than one-third of the farmers who are engaged in its production in the preceding year, disapprove thereof in a referendum conducted by the Secretary. Standards for determining quotas are provided and the cotton is apportioned to the states on a baleage basis, which is converted to acres and apportioned to each farm. A producer who markets cotton in excess of the quota established for his farm, must remit to the Secretary the amount per pound prescribed pursuant to the Act.

The facts are not in dispute. The appellant marketed cotton in excess of the quota for the years 1940, 1941, and 1942. The penalties on such excess totaled $7039.52, and are unpaid. As established for the 1940-41 marketing year (7 U. S. C. A. 1348), they were at the rate of 3 cents

per pound, for 1941-42, 7 cents per pound and for 1942-43, 8 cents per pound. Liability for collection of the penalty is primarily upon the buyer of cotton but the producer remains liable for its payment if it is not collected by the buyer or transferee. Prepayment of the penalty may be made, and under certain conditions the producer may deposit it in escrow or give a bond to secure its payment. Quotas were in effect during the years involved and were proclaimed for 1943-44 and approved by the producers. However, on July 10, 1943, the War Food Administrator terminated the quotas for that year as "necessary in order to meet the present emergency and to effectuate the declared policy of the Act." 8 Fed. Reg. 12922, 12923. On September 21, 1943, the War Food Administrator proclaimed that cotton marketing quotas would likewise not be in effect for the marketing year beginning August 1, 1944, in pursuance of the provisions of the Act, "that the powers therein granted shall not be used to discourage the production of sufficient supplies of foods and fibers to maintain normal domestic consumption, taking into consideration current trends in consumption and export and the quantities of substitutes available at fair prices."

The appellant's principal contention is that because cotton quotas were suspended for the 1943-44 marketing year and have not since been renewed, the penalties for which judgment was rendered are not recoverable. He relies upon § 371 of the Act (7 U. S. C. A. 1371), which authorizes the Secretary of Agriculture to increase or terminate existing quotas when he finds, upon investigation, that the commodity which is free of marketing restrictions equals the normal supply. He asserts the principle that after the expiration or repeal of a law no penalties can be enforced or punishment inflicted for violations of the law during the time when it was in force, unless provision is made for that purpose by statute. There is no "saving clause" in the Agricultural Adjustment Act, nevertheless, his contention must be rejected. *U. S.* v. *Hark*, 320 U. S. 531; *U. S.* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304; *Bowles* v. *May*

Hardwood Co., 140 Fed. (2d) 914 (C. C. A. 6); *O'Neal* v. *U. S.*, 140 Fed. (2d) 908 (C. C. A. 6), cert. den. 322 U. S. 729. This conclusion is not compelled and gains nothing from the Act of March 22, 1944, Title 1, § 29 U. S. C. A., which, in effect, imports a "saving clause" into every repealed statute providing for a penalty, forfeiture or liability unless precluded by the terms of the statute itself. Section 29, prescribing a rule differing from that of the common law, must be strictly construed and limited to repealed statutes. *U. S.* v. *Hark*, 49 Fed. Supp. 95, D. C. Mass., reversed on other grounds, 320 U. S. 531.

In the *Hark* case the Supreme Court pointed out that the common-law rule that the repeal of a statute ends the power to prosecute for prior violations is absent in the case of a prosecution for violation of a regulation issued pursuant to an existing statute which expresses a continuing policy to enforce which the regulation was authorized. Revocation of the regulation does not repeal the statute. Neither the Agricultural Adjustment Act nor its provisions regulating the production of cotton, have been repealed. The Act still expresses a continuing policy and the suspension orders of the Administrator are declared to be in pursuance of that policy. The appellant may draw no comfort from *U. S.* v *Chambers*, 291 U. S. 217, wherein it is declared that in case a statute is repealed or rendered inoperative, no further proceedings can be had to enforce it unless competent authority has kept it alive for that purpose. The present statute, as already observed, has not been repealed nor has it been rendered inoperative. So long as it remains in effect, quotas may be established whenever the conditions prescribed demand them and the purpose of the Act is to be served. The *Chambers* case dealt with the National Prohibition Law. It had not then been repealed but its continued efficacy was terminated by controlling action from the very source of power which permitted it to be enacted and enforced. No such authority has here been withdrawn by the only power competent to withdraw it—the Congress of the United States.

The appellant's contention that no interest is collect-

ible on the penalties, is based upon Title 28, § 811 U. S. C. A. which permits the allowance of interest on civil judgments in all cases where, by the law of the state, such interest may be recovered, and the rule in Tennessee that interest is not recoverable on penalties. *McCreary* v. *First Nat'l Bank*, 109 Tenn. 128. This requires consideration whether the so-called penalties provided in the Agricultural Adjustment Act are, in essence, true penalties.

In common parlance and by dictionary definition the term "penalty" is more commonly applied to punishment for crime or other offenses. Bouvier defines it as "*punishment inflicted by law for its violation.*" The words "penal" and "penalty" in their strict and primary sense, denote a punishment provided by statute for an unlawful act. *U. S.* v. *LaFranca*, 282 U. S. 568; *U. S.* v. *Chouteau*, 102 U. S. 603; *U. S.* v. *Jaffrey*, 97 Fed. (2d) 488 (C. C. A. 8). In the last cited case it was said that the term "penalty" involves the idea of punishment and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal one. See also *U. S.* v. *$420*, 162 Fed. 803, D. C. S. D. Ala.

In *Usher* v. *U. S.*, 146 Fed. (2d) 369, the Circuit Court of Appeals for the Fourth Circuit, in deciding that liability for penalties under the present Act need not be established by proof beyond a reasonable doubt, said: "The object of the Act and the regulation was to prevent an over-production of cotton. It was not a crime to produce cotton in excess of the allotment, but if there was such over-production the penalty was imposed, not as a punishment for crime, but to prevent over-production of the commodity. The grower was at liberty to produce all the cotton he wished to produce provided this penalty was complied with. The penalty differs from an ordinary penalty which is imposed in connection with the commission of an unlawful act. It is significant . . . that the administrative regulations provide that the penalty may be prepaid, deposited in escrow, or secured, by the producer. . . ."

We are persuaded that the so-called penalties prescribed in the Act are not in a true sense the penalties considered by the Tennessee Court upon which interest was held not recoverable. The *McCreary* case, supra, involved penalties under the National Banking Act for usury, an imposition that was definitely penal in nature and therefore subject to the rule of strict construction. There is, under the statute here involved, no prohibition upon the production or marketing of excess quota cotton. Under its power to regulate interstate commerce the Congress, to avoid a wasteful, uneconomic surplus, provided for the establishment of quotas and sought to discourage production and sale in excess of such quotas. We said in *Fraser* v. *U. S.*, 145 Fed. (2d) 139, "No question of due process inheres in holding the buyer who collects the penalty liable for its payment. When with due notice he buys non-quota cotton he subjects himself to the provisions of the Act and may not complain. He is under no obligation to buy." Similar language may be applied to the seller. He is under no obligation to produce, and having produced is under no obligation to sell; but selling, he incurs an obligation to the Secretary of Agriculture. It is a debt which arises through operation of law. It may not be enforced by criminal sanctions, as in the case of a fine. It is not imposed as punishment but to carry out the power of Congress to regulate transactions in interstate commerce.

U. S. v. *West Texas Cottonoil Co.*, 155 Fed. (2d) 463 (C. C. A. 5), is, in one aspect, in conflict with the view here expressed. There the court drew a distinction between interest recoverable on penalties and interest recoverable on a judgment for penalties, sustaining interest on the judgment but denying recovery of interest prior to judgment, saying, "Since in fact and in law the amount sued for is a penalty no interest can be recovered on it before judgment." It does not appear, however, that in that case the distinction here and elsewhere drawn between a true penalty as punishment for law violation and a sanction such as is here involved, was pressed upon or given consideration by the court. In any event, the case

is authority for the proposition that the judgment below may bear interest from the date of its pronouncement.

There is left the question whether the court was in error in adding to the penalties interest from the date when the penalties should have been remitted to the Secretary. The general rule, of course, is that liquidated demands bear interest while those unliquidated do not. Where, however, the amount can be determined by mere computation at the commencement of the action, interest is recoverable from the date the liability accrues. *Abell* v. *Anderson*, 148 Fed. (2d) 372 (C. C. A. 6); *Robertson* v. *Miller*, 286 Fed. 503 (C. C. A. 2). The amount of the grower's quotas was fixed. The number of pounds sold over quota was known, as was the penalty per pound. Nothing was left to be done except a simple mathematical computation at the time the excess cotton was marketed. The appellant's liability was then fixed and determinable. This is clearly recognized in the provisions of the Act which permit prepayment of the penalty, its deposit in escrow or the filing of a bond to secure its payment.

AFFIRMED.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *W. Clay Rodgers* v. *United States of America*, No. 10264, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 4th day of March, A. D. 1947.

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 5, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the first two questions presented by the petition for the writ. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.